



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 29, 1993

Mr. Charles E. Griffith, III  
Deputy City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR93-377

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19795.

The City of Austin (the "city") has received a request for the City Manager's notes ("CMO Notes") given to the assistant city managers. Specifically, the requestor seeks:

1. All copies of "CMO Notes" (City Manager's Office Notes) for 1993 up to April 1, 1993 in whatever form such notes are recorded.
2. All attached material appended to such notes for all "CMO Notes" generated during 1993.
3. All written responses generated by all assistant city managers in response to the tasks outlined in all "CMO Notes" generated by the City Manager's Office in 1993.<sup>1</sup>

You state that "CMO Notes are instructions given weekly by the City Manager to her Assistant City Managers, related to assignments for the preparation of City Council Ordinances and Resolutions and other matters directly related to the operation of city government" and as such are excepted from public disclosure under sections 3(a)(6) and 3(a)(11) of the Open Records Act.

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<sup>1</sup>We note that a governmental body is not required to treat a request as embracing information prepared after the request was made. Open Records Decision No. 452 (1986) at 2-3. Since the request was made on April 2, 1993, the city may construe the phrases "generated during 1993" and "generated by the City Manager's Office in 1993" to be limited to information in existence as of April 2, 1993.

The city has submitted for our review seven CMO Notes with a total of 109 items addressed on the notes. We have received CMO Notes dated Thursday, January 7, 1993 (29 items--no attachments); Tuesday, January 12, 1993 (17 items--no attachments); Thursday, February 18, 1993 (15 items--with attached response to item 1); Tuesday, March 9, 1993 (12 items--with copy of city council agenda regarding item 12); Wednesday, March 10, 1993 (6 items--with attached response to item 1); Thursday, March 25, 1993 (24 items--no attachments); and Thursday April 1, 1993 (6 items--with attachments for items 2, 5, and 6). In total, there are attached responses for two items and four attachments appended for specific items.<sup>2</sup>

Section 3(a)(6) excepts "drafts and working papers involved in the preparation of proposed legislation." Section 3(a)(6) protects the internal deliberative processes of a governmental body in enacting legislation. Open Records Decision No. 248 (1980). It does not, however, except basically factual information. Open Records Decision No. 344 (1982). Although section 3(a)(6) is designed to encourage frank discussion on policy matters between subordinates or advisors of a legislative body, it is specifically applicable only to "preparation of proposed legislation." Open Records Decision No. 429 (1985) at 5.

You contend that "[m]any of the entries on the CMO notes relate directly to the preparation or analysis of legislative matters." We have reviewed the documents you submitted for our consideration. You did not mark which entries you believe are excepted under section 3(a)(6). Accordingly, we have marked all of the entries that appear on their face to relate to proposed legislation and which we conclude may be excepted under section 3(a)(6).<sup>3</sup> You may not withhold the remainder of the information under section 3(a)(6) of the Open Records Act.

Section 3(a)(11) excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." For several months now, the effect of the section 3(a)(11) exception has been the focus of litigation. In *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), the Third Court of Appeals recently held that section 3(a)(11) "exempts those documents, and only those documents, normally privileged in the civil discovery context." *Gilbreath*, 842 S.W.2d at 413. The court has since denied a motion for rehearing this case.

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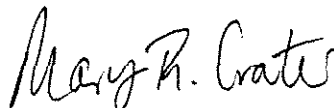
<sup>2</sup>We assume there are no written records for the responses for the remaining items and that none of the other items had attachments, or that the information has been or will be released to the requestor.

<sup>3</sup>Although we have marked the reference to a city ordinance in the CMO Notes dated Thursday, April 1, 1993, item 6, and the attached copy of the ordinance, the ordinance may only be excepted if it has not already been enacted. If it has been enacted, it is a public record and may not be withheld.

We are currently reviewing the status of the section 3(a)(11) exception in light of the *Gilbreath* decision. In the meantime, we are returning your request to you and asking that you once again review the information and your initial decision to seek closure of this information under section 3(a)(11). We remind you that it is within the discretion of governmental bodies to release information that may be covered by section 3(a)(11). If, as a result of your review, you still desire to seek closure of the information, you must re-submit your request and the documents at issue, along with your arguments for withholding the information pursuant to section 3(a)(11) or any other exception that you have previously raised. You must submit these materials within 15 days of the date of this letter. This office will then review your request in accordance with the *Gilbreath* decision. If you do not timely resubmit the request, we will presume that you have released this information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/LBC/jmn

Ref.: ID# 19795  
ID# 19841

Enclosures: submitted documents

cc: Mr. Roger C. Baker, Jr.  
1303 Bentwood  
Austin, Texas 78722  
(w/o enclosures)